

K175ferP plea

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

19 Cr. 267 (JGK)

5 LEONARDO FERNANDEZ,

6 Defendant.

7 -----x

8 January 7, 2020
9 11:20 a.m.

10 Before:

11 HON. JOHN G. KOELTL,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
17 Southern District of New York

BY: KARIN PORTLOCK

Assistant United States Attorney

18 DEL VALLE & ASSOCIATES

Attorneys for Defendant

19 BY: TELESFORO DEL VALLE , JR.

20 ALSO PRESENT: MICHAEL KELLY, Detective, NYPD

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(Case called)

THE DEPUTY CLERK: All parties please state who they are for the record.

MS. PORTLOCK: Good morning, your Honor. Karen Portlock for the government. I am joined by Detective Michael Kelly with NYPD.

MR. DEL VALLE: Good morning, your Honor. Ted Del Valle representing Mr. Leonardo Fernandez who is standing to my left.

THE COURT: Good morning.

I have a plea agreement dated October 30, 2019. I have marked it as Court Exhibit 1. It's an October 30th, 2019 letter from the government to Mr. Del Valle, it appears to be signed by government lawyers and appears to be signed by Mr. Fernandez and Mr. Del Valle today, January 7th, 2020.

Mr. Del Valle, is that the plea agreement?

MR. DEL VALLE: It is, your Honor.

THE COURT: Okay. And does the defendant wish to withdraw his previously entered plea of not guilty and enter a plea of guilty to Count One of the indictment?

MR. DEL VALLE: He does, your Honor.

THE COURT: Okay.

Mr. Fletcher, please administer the oath to the defendant.

THE DEPUTY CLERK: Mr. Fernandez, please rise. Raise

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1 your hand.

2 (Defendant sworn)

3 THE DEPUTY CLERK: Put your hand down. Please state
4 your full name for the record.

5 THE DEFENDANT: Leonardo Fernandez.

6 THE DEPUTY CLERK: Please remain standing and speak
7 into the mic.

8 THE COURT: Mr. Fernandez, do you understand that you
9 are now under oath and if you answer any of my questions
10 falsely, your false or untrue answers may later be used against
11 you in another prosecution for perjury or making a false
12 statement?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Tell me your full name, please.

15 THE DEFENDANT: Leonardo R. Fernandez.

16 THE COURT: How old are you?

17 THE DEFENDANT: 32.

18 THE COURT: How far did you go in school?

19 THE DEFENDANT: Tenth grade.

20 THE COURT: Are you a citizen of the United States?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Are you able to speak and understand
23 English?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Are you now or have you recently been

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1 under the care of a doctor or a psychiatrist?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Have you ever been treated or hospitalized
4 for any mental illness or any type of addiction including drug
5 or alcohol addiction?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Please tell me about that, please. Let's
8 break it down. Have you ever been treated or hospitalized for
9 any mental illness?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: Have you been treated or hospitalized for
12 addiction, either to alcohol or drugs?

13 THE DEFENDANT: I have been treated for addiction.

14 THE COURT: Okay.

15 THE DEFENDANT: Drugs.

16 THE COURT: And when was the last time that you were
17 treated?

18 THE DEFENDANT: 2018.

19 THE COURT: Is there anything about your use of drugs
20 or your treatment for drug addiction that interferes with your
21 ability to understand these proceedings and to consult with
22 your lawyer?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: In the past 24 hours have you taken any
25 drugs, medicine, or pills, or have you drunk any alcohol?

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1 THE DEFENDANT: No, your Honor.

2 THE COURT: Is your mind clear today?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Are you feeling all right today?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do either counsel have any doubt as to the
7 defendant's competence to plead at this time?

8 MS. PORTLOCK: No, your Honor.

9 MR. DEL VALLE: No, your Honor.

10 THE COURT: Mr. Fernandez, Mr. Del Valle your lawyer
11 has informed me that you wish to enter a plea of guilty to
12 Count One of the indictment. Is that what you wish to do?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Have you had a full opportunity to discuss
15 your case with Mr. Del Valle and to discuss the consequences of
16 entering a plea of guilty?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Are you satisfied with Mr. Del Valle and
19 his representation of you?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: On the basis of Mr. Fernandez' responses
22 to my questions and my observations of his demeanor, I find
23 that he is fully competent to enter an informed plea at this
24 time.

25 Now, Mr. Fernandez, before I accept any plea from you

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1 I'm going to be asking you certain questions. My questions are
2 intended to satisfy me that you wish to plead guilty because
3 you are in fact guilty and that you fully understand the
4 consequences of your plea and, furthermore, that you are
5 pleading guilty knowingly and voluntarily and that there is an
6 independent basis, in fact, for your plea.

7 Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: I am now going to describe to you certain
10 rights that you have under the Constitution and laws of the
11 United States, which rights you will be giving up if you enter
12 a plea of guilty. Please listen to me very carefully. If
13 there is anything that I say that you don't understand, please
14 ask me to stop and either or Mr. Del Valle will explain it to
15 you more fully.

16 All right?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: All right.

19 Mr. Fernandez, under the Constitution and laws of the
20 United States you have a right to a speedy and public trial by
21 a jury on the charges against you which are contained in the
22 indictment.

23 Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: If there were a trial, you would be

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1 presumed to be innocent and the government would be required to
2 prove you guilty by competent evidence and beyond a reasonable
3 doubt. You would not have to prove that you were innocent at
4 trial.

5 Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: If there were a trial, a jury composed of
8 12 people selected from this district would have to agree
9 unanimously that you were guilty.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: If there were a trial, you would have the
13 right to be represented by a lawyer and if you could not afford
14 a lawyer, a lawyer would be provided to you free of cost.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: In fact, Mr. Fernandez, you have a right
18 to be represented by a lawyer at trial and at every other stage
19 of the proceedings against you, and if you cannot afford a
20 lawyer, a lawyer would be provided to you free of cost.

21 Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: If there were a trial, you would have the
24 right to see and hear all of the witnesses against you and your
25 attorney could cross-examine them. You would have a right to

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1 have your attorney object to the government's evidence and
2 offer evidence on your behalf, if you so desired; and you would
3 have the right to have subpoenas issued or other compulsory
4 process used to compel witnesses to testify in your defense;
5 and, you would not be required to testify.

6 Do you understand all of that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: If there were a trial, you would have the
9 right to testify if you wanted to, but no one could force you
10 to testify if you didn't want to. And, furthermore, no
11 inference or suggestion of guilt could be drawn if you chose
12 not to testify at trial.

13 Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Mr. Fernandez, do you understand each and
16 every one of the rights that I have described to you?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you have any questions about any of
19 those rights?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: Do you understand that by entering a plea
22 of guilty today, you are giving up each and every one of those
23 rights, that you are waiving those rights, and that you will
24 have no trial?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Do you understand that you can change your
2 mind right now and refuse to enter a plea of guilty? You don't
3 have to enter this plea if you don't want to for any reason at
4 all.

5 Do you understand that completely?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Now, Mr. Fernandez, you have received a
8 copy of the indictment against you; is that correct?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: And have you read it?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Did you discuss it with your lawyer?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Do you understand what you were charged
15 with in the indictment?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Now, I understand that you wish to enter a
18 plea of guilty to Count One of the indictment. Do you
19 understand that if you did not plead guilty, the government
20 would be required to prove each and every part or element of
21 Count One, the government would be required to prove each and
22 every part or element of the crime charged in Count One beyond
23 a reasonable doubt, at trial?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Let me go over Count One with you, just to

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1 make sure that I satisfy myself that you understand what you
2 are charged with and what the government would have to prove
3 beyond a reasonable doubt and what the maximum sentence is for
4 Count One.

5 Count One alleges, in substance, that on or about
6 December 18, 2018, in the Southern District of New York,
7 Leonardo Fernandez, the defendant, intentionally and knowingly,
8 did distribute and possess with intent to distribute a
9 controlled substance in violation of Title 21, United States
10 Code, Section 841(a)(1). The controlled substance involved in
11 the offense was mixtures and substances containing a detectable
12 amount of cocaine base in violation of Title 21, United States
13 Code, Section 841(b)(1)(C). All of this in violation of Title
14 21, United States Code, Sections 812, 841(a)(1) and
15 841(b)(1)(C).

16 Do you understand that's what you are charged with in
17 Count One of the indictment?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you understand that if you did not
20 plead guilty, the government would be required to prove beyond
21 a reasonable doubt, at trial:

22 First, that on or about December 18, 2018, you
23 possessed a controlled substance and either distributed the
24 controlled substance or had the intent to distribute the
25 controlled substance;

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1 Second, that you, the defendant, did so unlawfully,
2 intentionally and knowingly; and

3 Third, that the substance involved was in fact
4 cocaine.

5 Do you understand the substance was mixtures and
6 substances containing a detectable amount of cocaine base --
7 and cocaine base is commonly known as crack.

8 Do you understand the government would be required to
9 prove all of that beyond a reasonable doubt at trial?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that the maximum penalty
12 for the crime alleged in Count One is a maximum term of 20
13 years in prison, a mandatory minimum term of three years'
14 supervised release, a maximum term of supervised release of
15 life, a maximum fine of the greatest of \$1 million or twice the
16 gross pecuniary gain derived from the offense or twice the
17 gross pecuniary loss to persons other than yourself as a result
18 of the offense, and a mandatory \$100 special assessment?

19 Do you understand that's the maximum penalty as well
20 as the mandatory minimum term of supervised release for the
21 crime to which you are entering a plea of guilty?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand that when I talk about
24 supervised release, supervised release means that you will be
25 subject to monitoring when you are released from prison and

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1 that the monitoring is to be under terms and conditions which
2 could lead to re-imprisonment without a jury trial if you
3 violate them?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that if you violated the
6 terms of supervised release and were sentenced to prison, you
7 could be sentenced to prison for the entire term of supervised
8 release without any credit for any time you had already spent
9 on supervised release?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that as part of your
12 sentence I can also order restitution to any person injured as
13 a result of your criminal conduct?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: The indictment also contains a forfeiture
16 allegation in which the government seeks to have you forfeit
17 any and all property, constituting or derived from any proceeds
18 that you obtained, directly or indirectly as a result of the
19 offense charged in Count One, and any and all property, used or
20 intended to be used, in any manner or part, to commit and to
21 facilitate the commission of that offense, including but not
22 limited to a sum of money in United States currency
23 representing the amount of proceeds traceable to the commission
24 of that offense?

25 Do you understand that?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: So, do you understand that as part of your
3 sentence I can also order forfeiture?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you also understand that if I accept
6 your guilty plea and adjudge you guilty, that adjudication may
7 deprive you of valuable civil rights such as the right to vote,
8 the right to hold public office, the right to serve on a jury,
9 and the right to possess any kind of firearm?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Now, Mr. Fernandez, under current law
12 there are sentencing guidelines that judges must consult in
13 determining your sentence. You have spoken to Mr. Del Valle
14 about the sentencing guidelines, haven't you?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you understand that I, as the
17 sentencing court, will not be able to determine your guideline
18 sentence until after the Probation Department has completed a
19 presentence report and after you and your lawyer and the
20 government have had an opportunity to review that report, to
21 challenge anything contained in the report, and to bring those
22 challenges to my attention?

23 Do you understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you also understand that even after it

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1 is determined what the basic guideline sentencing range is in
2 your case I have the authority, in some circumstances, to
3 depart upward or downward from the sentence that is otherwise
4 called for in the guidelines in determining the correct
5 guideline sentencing range in your case?

6 Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And even after I have made that
9 determination of the guideline sentencing range in your case,
10 taking into account any upward or downward departures, I must
11 then consult other statutory factors to make a final
12 determination of what the appropriate and reasonable sentence
13 is in your case.

14 Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you also understand that if you are
17 sentenced to prison, parole has been abolished and you will not
18 be released any earlier on parole?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that if your lawyer or
21 anyone else has attempted to estimate or predict what your
22 sentence will be, that their estimate or prediction could be
23 wrong?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: No one, Mr. Fernandez, not your lawyer,

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1 not the government -- no one -- can nor should give you any
2 assurance of what your sentence will be since that sentence can
3 only be determined after the Probation Department has completed
4 the presentence report, after I have ruled on any challenges to
5 the report, and after I have determined what the appropriate
6 and reasonable sentence is in your case.

7 Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you also understand that even if your
10 sentence is different from what your lawyer or anyone else told
11 you that it might be, or if it is different from what you
12 expect it to be, you will still be bound by your guilty plea
13 and you will not be allowed to withdraw your plea of guilty?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Now, Mr. Fernandez, as you heard at the
16 outset, I have been given the plea agreement, the October 30
17 letter to your lawyer from the government, I have marked it as
18 Court Exhibit 1, it appears to be signed by government lawyers
19 and by you and your lawyer today, the government lawyers signed
20 it earlier. But, you and your lawyer appear to have signed it
21 today, January 7th. I don't know when the government lawyers
22 signed it but your signature is dated today, as is your
23 lawyer's.

24 Have you signed this plea agreement?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: Did you read the agreement before you
2 signed it?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Did you discuss it with your lawyer before
5 you signed it?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Did you fully understand the agreement
8 before you signed it?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Does this letter agreement constitute your
11 complete and total understanding of the entire agreement
12 between the government, your lawyer, and you?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Is everything that you understand about
15 your plea and your sentence contained in this plea agreement?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Has anything been left out?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: Has anyone offered you any inducements, or
20 threatened you, or forced you to plead guilty or to enter into
21 this plea agreement?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: There is a provision of the plea agreement
24 which provides that the defendant will not file a direct appeal
25 nor bring a collateral challenge, including but not limited to

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1 an application under Title 28, United States Code, Section 2255
2 and/or Section 2241 of any sentence within or below the
3 stipulated guidelines range of 151 to 188 months' imprisonment.

4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: So, do you understand that if I sentence
7 you to 188 months' imprisonment or less, you have given up your
8 right to appeal any such sentence, to challenge any such
9 sentence in any proceeding including any habeas corpus
10 proceeding?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: The agreement also provides that you will
13 not appeal any term of supervised release that is less than or
14 equal to the statutory maximum, that you will not appeal any
15 fine that is less than or equal to \$1 million, and you will not
16 appeal any special assessment that is less than or equal to
17 \$100.

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you also understand that the Court is
21 not bound by the plea agreement or by any of the provisions in
22 the plea agreement? The Court must make an independent
23 determination of the appropriate sentence in your case, and
24 even if that determination differs from anything that's
25 contained in the plea agreement, you will still be bound by

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1 your guilty plea and you will not be allowed to withdraw your
2 plea of guilty.

3 Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Mr. Del Valle, do you know of any valid
6 defense that would prevail at the trial of Mr. Fernandez?

7 MR. DEL VALLE: No, your Honor.

8 THE COURT: Do you know of any reason why
9 Mr. Fernandez should not be permitted to plead guilty?

10 MR. DEL VALLE: No, your Honor.

11 THE COURT: Mr. Fernandez, please tell me what you did
12 in connection with the crime to which you are entering a plea
13 of guilty.

14 THE DEFENDANT: On or about December 18, 2018, in the
15 Bronx, I sold crack cocaine to an undercover officer. When I
16 did this, I knew that what I was doing was illegal.

17 I am very sorry for what I have done.

18 THE COURT: Okay. When you sold the crack to the
19 undercover agent, did you know that what you were doing was
20 wrong and illegal?

21 THE DEFENDANT: Yes, sir. Yes, your Honor.

22 THE COURT: Does the government want me to ask any
23 other questions of the defendant?

24 MS. PORTLOCK: No, your Honor.

25 THE COURT: Ms. Portlock, please tell me what the

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1 government's evidence would be at trial.

2 MS. PORTLOCK: Yes, your Honor.

3 If this case proceeded to trial, the government's
4 evidence would consist of the witness testimony including
5 testimony of chemists who conducted laboratory analysis of the
6 drugs the defendant sold, physical evidence including the
7 actual narcotics, as well as video worn by the undercover
8 capturing that particular buy on December 18, 2018.

9 THE COURT: In the Bronx?

10 MS. PORTLOCK: Yes, your Honor.

11 THE COURT: And would the government's evidence
12 establish the defendant's guilt beyond a reasonable doubt?

13 MS. PORTLOCK: Yes, your Honor.

14 THE COURT: Mr. Fernandez, how do you plead to the
15 charge against you in Count One of the indictment; guilty or
16 not guilty?

17 THE DEFENDANT: Guilty.

18 THE COURT: Are you pleading guilty because you are in
19 fact guilty?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Are you pleading guilty voluntarily and of
22 your own free will?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Before I finally accept the defendant's
25 plea, Mr. Del Valle, do you want me to ask any other questions

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1 of the defendant?

2 MR. DEL VALLE: No. Thank you, your Honor.

3 THE COURT: Do you know of any reason why I should not
4 accept his plea?

5 MR. DEL VALLE: I do not, your Honor.

6 THE COURT: Ms. Portlock, does the government want me
7 to ask any other questions of the defendant?

8 MS. PORTLOCK: No, your Honor.

9 THE COURT: Does the government know of any reason why
10 I should not accept this plea?

11 MS. PORTLOCK: No, it does not, your Honor.

12 THE COURT: Mr. Fernandez, because you acknowledge
13 that you are guilty as charged in Count One of the indictment,
14 because I find that you know your rights and are waiving them
15 knowingly and voluntarily, because I find that your plea is
16 entered knowingly and voluntarily and is supported by an
17 independent basis in fact containing each of the essential
18 elements of the offense, I accept your guilty plea and I
19 adjudge you guilty of the offense to which you have pleaded.

20 Mr. Fernandez, the Probation Department will now
21 prepare the presentence report to assist me in sentencing. You
22 will be interviewed by the Probation Department. It is very
23 important that the information you provide to the Probation
24 Department be truthful and accurate. The presentence report is
25 very important to me in my decision as to what your sentence

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1 will be. You and your lawyer and the government will have the
2 opportunity to review the presentence report, to challenge
3 anything contained in the report, and then you and your lawyer
4 and the government will have the opportunity to speak at your
5 sentencing.

6 Let me get a sentencing date for you.

7 THE DEPUTY CLERK: April 17th, 10:00.

8 THE COURT: April 17, at 10:00 a.m., for sentence.

9 Is that satisfactory for both sides?

10 MR. DEL VALLE: Yes, your Honor.

11 MS. PORTLOCK: Yes, your Honor.

12 THE COURT: I would ask for the defense submissions 14
13 days before sentence, and the government's submission eight
14 days before sentence.

15 MR. DEL VALLE: Yes, your Honor.

16 THE COURT: Okay. Anything further?

17 MS. PORTLOCK: Not from the government, your Honor.

18 Thank you.

19 MR. DEL VALLE: Nothing further from the defendant.

20 Thank you, your Honor.

21 THE COURT: All right. I am returning Court Exhibit 1
22 to the government.

23 MS. PORTLOCK: Thank you.

24 THE COURT: All right. Good morning, all.

25 o0o